

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

Page 2

FEB 2 2007

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

at _____ o'clock and _____ min. _____ M
SUE BEITIA, CLERK *epv*

United States District Court		District of Hawaii	
Name (under which you were convicted): LESLIE A. KAKINAMI		Docket or Case No.: CR. 05-00373 DAE	
Place of Confinement: Dept. of Public Safety, Womens Correctional Ctr., Kailua, HI		Prisoner No.: A0253571	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted)	
v. LESLIE A. KAKINAMI			

MOTION

CV 07-00055 DAE BMK

- (a) Name and location of court that entered the judgment of conviction you are challenging: _____
U.S. District Court, District of Hawaii

- (b) Criminal docket or case number (if you know): CR. 05-00373 DAE
- (a) Date of the judgment of conviction (if you know): August 17, 2006/August 23, 2006

- (b) Date of sentencing: August 17, 2006
- Length of sentence: 69 Months
- Nature of crime (all counts): _____
Counts 3, 4, & 5: Bank Fraud 18 U.S.C. §1344 & 1349.
Count 9: Aggravated Identity Theft 18 U.S.C. §1028A.

- (a) What was your plea? (Check one)
(1) Not guilty ☐ (2) Guilty ☒ (3) Nolo contendere (no contest) ☐
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? _____
Plead guilty to above listed counts; other counts were
dismissed by the government based upon my pleas to above
counts as outlined in memorandum of plea agreement.

- If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☐
8. Did you appeal from the judgment of conviction? Yes ☐ No ☒
9. If you did appeal, answer the following:
- (a) Name of court: _____
- (b) Docket or case number (if you know): _____
- (c) Result: _____
- (d) Date of result (if you know): _____
- (e) Citation to the case (if you know): _____
- (f) Grounds raised: _____
- _____
- _____
- _____
- _____
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒
- If "Yes," answer the following:
- (1) Docket or case number (if you know): _____
- (2) Result: _____
- _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____
- _____
- _____
- _____
- _____
- _____
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?
- Yes ☐ No ☒
11. If your answer to Question 10 was "Yes," give the following information:
- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: I am being held against my will in a State of Hawaii
correctional facility (Womens Community Correctional Ctr., Kailua).

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I was sentenced by Federal District Court Judge David A. Ezra
on August 17, 2006 to 69 months imprisonment. The judgment of
conviction states that I am "...committed to the custody of the
United States Bureau of Prisons to be imprisoned...". Immediately
following my sentence I was returned by the U.S. Marshalls to the
Federal Detention Center where I was being held with no bail.
A couple of days following my sentece by Judge Ezra I was somehow
(not sure if by Writ or by an "accomodation") taken out of Federal
custody and placed in State custody at Oahu Community Crrectional
Ctr. to await an August 28, 2006 State sentence by Judge Michael
A. Town. Judge Town sentenced me "concurrent" with any Federal

(b) **Direct Appeal of Ground One:** sentence. Since then I have not been re-
turned to Federal custody.
(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____
Never appealed

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: The instant petition is the first time I've raised
this issue.

GROUND TWO: I am being denied Federal "credit" time while I
am being held against my will in State custody.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Even though my State of Hawaii sentence was imposed and entered
eleven (11) days following my Federal sentence, and even though
the SOH judgments of conviction (10 total) all state that the sentence
is "concurrent" with my Federal sentence, and even though Judge
Town issued a supplemental sentencing order filed Nov. 30, 2006
in the First Circuit Court, SOH, which states unequivocally that
I am to be "...immediately transported from State custody and
be remanded to the care and custody of the Federal Marshall
service, whereby she shall be transported to a Federal Incarceration
Facility...", I am still being held in State custody.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

Never appealed

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: The instant petition is the first time I've raised
this issue.

GROUND THREE: My illegal detention in a State incarceration facility
constitutes cruel and unusual punishment.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
I have exhausted all State remedies to correct my illegal
detention by the State of Hawaii, including asking the Hawaii
Paroling Authority to parole me to the Federal Bureau of Prisons
only to be denied and only to have the Paroling Authority punish
me further by imposing a harsher minimum term than was imposed
by Judge Town. There exists a racketeering influenced corrupt
organization/association within the Dept. of Public Safety, SOH,
so as to deny me my Federal Constituional right of freedom
from cruel and unusual punishment.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____
Never appealed.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: The instant petition is the first time I've raised
this issue.

GROUND FOUR: Nothing further.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court?

If so, which ground or grounds have not been presented, and state your reasons for not

presenting them: None

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court

for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Pamela Byrne, AFPD

(b) At arraignment and plea: Same

(c) At trial: _____

(d) At sentencing: Same

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(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☒ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: First Circuit Court, SOH, Judge Michael A. Town

(b) Give the date the other sentence was imposed: August 28, 2006

(c) Give the length of the other sentence: 10 years indeterminate, 7 yrs.

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☒ No ☐ ^{6 mons.}
minimum.

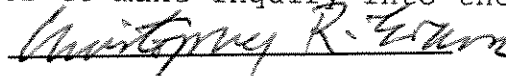
* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of —

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: _____

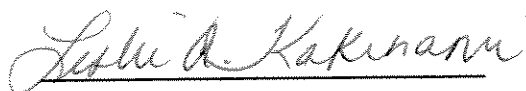
That I be immediately returned to the custody of the Federal
Bureau of prisons to start my federal sentence, that I be given
or any other relief to which movant may be entitled. credit for the time from Aug.
17, 2006 to the date this petition is granted, and that the Court
appoint an independent prosecutor to make inquiry into the denial
of my federal constitutional rights.



Signature of Attorney (if any)
CHRISTOPHER R. EVANS, Esq.
Tel: 988-5375

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on n/a
_____ (month, date, year).

Executed (signed) on Feb. 2 2007 (date).



Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

* * * * *